

AUG 02 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSEFINA MUNGUIA-VARGAS ;
a.k.a. Josefina Vargas Mungia,*

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-73560

Agency No. A74-410-103

MEMORANDUM**

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006***

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Josefina Munguia-Vargas, a native and citizen of Mexico, petitions for

* The Clerk shall amend the docket to include petitioner Josefina Vargas Mungia's alias, Josefina Munguia-Vargas.

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her application for cancellation of removal. We have jurisdiction under 8 U.S.C. § 1252. We grant the petition for review and remand for further proceedings.

Munguia-Vargas's sole contention before this court is that the IJ violated due process by failing to rule on her application for voluntary departure. The BIA concluded there was no evidence that Munguia-Vargas applied for this form of relief at any time during the removal hearings. Contrary to the BIA's conclusion, the record reflects that Munguia-Vargas sought voluntary departure during a master calendar appearance on August 13, 2003. Accordingly, we reverse and remand to the IJ to consider Munguia-Vargas's eligibility for voluntary departure. *See* 8 C.F.R. § 1240.11(a)(2) ("The immigration judge shall inform the alien of his or her apparent eligibility to apply for. . .benefits. . .and shall afford the alien an opportunity to make application during the hearing. . ."); *INS v. Ventura*, 537 U.S. 12, 16 (2002) (per curiam).

PETITION FOR REVIEW GRANTED; REMANDED.